

AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 188

Introduced by Senator Runner

February 18, 2009

An act to ~~amend Section 527.8 of~~ *add Section 527.85 to* the Code of Civil Procedure, relating to temporary restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 188, as amended, Runner. Temporary restraining orders: schools.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, ~~that~~ *which* can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, other employees, as specified.

~~This bill would modify the definition of employer for the purposes of that provision to include an educational site, such as a school, college, university, or technical institute. The bill would also change the definition of employee for the purposes of that provision to include students at those educational sites~~ *similarly authorize any chief administrative officer of a school or a postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, to seek a temporary restraining order and an injunction, on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility, as specified. By creating new*

duties for local law enforcement officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 527.85 is added to the Code of Civil*
- 2 *Procedure, to read:*
- 3 *527.85. (a) Any chief administrative officer of a school or a*
- 4 *postsecondary educational institution, or an officer or employee*
- 5 *designated by the chief administrative officer to maintain order*
- 6 *on the school campus or facility, a student of which has suffered*
- 7 *unlawful violence or a credible threat of violence from any*
- 8 *individual, which can reasonably be construed to be carried out*
- 9 *or to have been carried out at the school campus or facility, may*
- 10 *seek a temporary restraining order and an injunction, on behalf*
- 11 *of the student and, at the discretion of the court, any number of*
- 12 *other students at the campus or facility.*
- 13 *(b) For the purposes of this section, the following definitions*
- 14 *shall apply:*
- 15 *(1) "Chief administrative officer" means the principal,*
- 16 *president, or highest ranking official of the school or the*
- 17 *postsecondary educational institution.*
- 18 *(2) "Course of conduct" means a pattern of conduct composed*
- 19 *of a series of acts over a period of time, however short, evidencing*
- 20 *a continuity of purpose, including any of the following:*
- 21 *(A) Following or stalking a student to or from school.*
- 22 *(B) Entering the school campus or facility.*
- 23 *(C) Following a student during school hours.*
- 24 *(D) Making telephone calls to a student.*

1 (E) *Sending correspondence to a student by any means,*
2 *including, but not limited to, the use of the public or private mails,*
3 *interoffice mail, fax, or computer e-mail.*

4 (3) *“Credible threat of violence” means a knowing and willful*
5 *statement or course of conduct that would place a reasonable*
6 *person in fear for his or her safety, or the safety of his or her*
7 *immediate family, and that serves no legitimate purpose.*

8 (4) *“Postsecondary educational institution” means a public or*
9 *private institution of vocational, professional, or postsecondary*
10 *education, the governing board of a community college district,*
11 *the Regents of the University of California, or the Trustees of the*
12 *California State University.*

13 (5) *“School” means any public or private elementary school,*
14 *junior high school, four-year high school, senior high school, adult*
15 *school or any branch thereof, opportunity school, continuation*
16 *high school, regional occupational center, evening high school,*
17 *or technical school, or any other place if a teacher and one or*
18 *more pupils are required to be at that place in connection with*
19 *assigned school activities.*

20 (6) *“Unlawful violence” means any assault or battery, or*
21 *stalking as prohibited in Section 646.9 of the Penal Code, but shall*
22 *not include lawful acts of self-defense or defense of others.*

23 (c) *This section does not permit a court to issue a temporary*
24 *restraining order or injunction prohibiting speech or other*
25 *activities that are constitutionally protected, or otherwise protected*
26 *by Section 527.3 or any other provision of law.*

27 (d) *Upon filing a petition for an injunction under this section,*
28 *the plaintiff may obtain a temporary restraining order in*
29 *accordance with subdivision (a) of Section 527, if the plaintiff also*
30 *files an affidavit that, to the satisfaction of the court, shows*
31 *reasonable proof that a student has suffered unlawful violence or*
32 *a credible threat of violence by the defendant, and that great or*
33 *irreparable harm would result to the student. In the discretion of*
34 *the court, and on a showing of good cause, a temporary restraining*
35 *order or injunction issued under this section may include other*
36 *named family or household members who reside with the student,*
37 *or other students at the campus or facility. A temporary restraining*
38 *order granted under this section shall remain in effect, at the*
39 *court’s discretion, for a period not to exceed 15 days, unless*
40 *otherwise modified or terminated by the court.*

1 (e) Within 15 days of the filing of the petition, a hearing shall
2 be held on the petition for the injunction. The defendant may file
3 a response that explains, excuses, justifies, or denies the alleged
4 unlawful violence or credible threats of violence or may file a
5 cross-complaint under this section. At the hearing, the judge shall
6 receive any testimony that is relevant and may make an
7 independent inquiry. Moreover, if the defendant is a current student
8 of the entity requesting the injunction, the judge shall receive
9 evidence concerning the decision of the school or postsecondary
10 educational institution decision to retain, terminate, or otherwise
11 discipline the defendant. If the judge finds by clear and convincing
12 evidence that the defendant engaged in unlawful violence or made
13 a credible threat of violence, an injunction shall be issued
14 prohibiting further unlawful violence or threats of violence. An
15 injunction issued pursuant to this section shall have a duration of
16 not more than three years. At any time within three months before
17 the expiration of the injunction, the plaintiff may apply for a
18 renewal of the injunction by filing a new petition for an injunction
19 under this section.

20 (f) This section does not preclude either party from
21 representation by private counsel or from appearing on his or her
22 own behalf.

23 (g) Upon filing of a petition for an injunction under this section,
24 the defendant shall be personally served with a copy of the petition,
25 temporary restraining order, if any, and notice of hearing of the
26 petition. Service shall be made at least five days before the hearing.
27 The court may, for good cause, on motion of the plaintiff or on its
28 own motion, shorten the time for service on the defendant.

29 (h) (1) The court shall order the plaintiff or the attorney for
30 the plaintiff to deliver a copy of each temporary restraining order
31 or injunction, or modification or termination thereof, granted
32 under this section, by the close of the business day on which the
33 order was granted, to the law enforcement agencies within the
34 court's discretion as are requested by the plaintiff. Each
35 appropriate law enforcement agency shall make available
36 information as to the existence and current status of these orders
37 to law enforcement officers responding to the scene of reported
38 unlawful violence or a credible threat of violence.

39 (2) At the request of the plaintiff, an order issued under this
40 section shall be served on the defendant, regardless of whether

1 *the defendant has been taken into custody, by any law enforcement*
2 *officer who is present at the scene of reported unlawful violence*
3 *or a credible threat of violence involving the parties to the*
4 *proceedings. The plaintiff shall provide the officer with an endorsed*
5 *copy of the order and proof of service that the officer shall*
6 *complete and send to the issuing court.*

7 *(3) Upon receiving information at the scene of an incident of*
8 *unlawful violence or a credible threat of violence that a protective*
9 *order has been issued under this section, or that a person who has*
10 *been taken into custody is the subject of an order, if the plaintiff*
11 *or the protected person cannot produce an endorsed copy of the*
12 *order, a law enforcement officer shall immediately attempt to verify*
13 *the existence of the order.*

14 *(4) If the law enforcement officer determines that a protective*
15 *order has been issued, but not served, the officer shall immediately*
16 *notify the defendant of the terms of the order and obtain the*
17 *defendant's address. The law enforcement officer shall at that time*
18 *also enforce the order, but may not arrest or take the defendant*
19 *into custody for acts in violation of the order that were committed*
20 *prior to the verbal notice of the terms and conditions of the order.*
21 *The law enforcement officer's verbal notice of the terms of the*
22 *order shall constitute service of the order and constitutes sufficient*
23 *notice for the purposes of this section, and Section 273.6 and*
24 *subdivision (g) of Section 12021 of the Penal Code. The plaintiff*
25 *shall mail an endorsed copy of the order to the defendant's mailing*
26 *address provided to the law enforcement officer within one business*
27 *day of the reported incident of unlawful violence or a credible*
28 *threat of violence at which a verbal notice of the terms of the order*
29 *was provided by a law enforcement officer.*

30 *(i) (1) A person subject to a protective order issued under this*
31 *section shall not own, possess, purchase, receive, or attempt to*
32 *purchase or receive a firearm while the protective order is in effect.*

33 *(2) The court shall order a person subject to a protective order*
34 *issued under this section to relinquish any firearms he or she owns*
35 *or possesses pursuant to Section 527.9.*

36 *(3) Every person who owns, possesses, purchases, or receives,*
37 *or attempts to purchase or receive a firearm while the protective*
38 *order is in effect is punishable pursuant to subdivision (g) of*
39 *Section 12021 of the Penal Code.*

1 (j) Any intentional disobedience of any temporary restraining
2 order or injunction granted under this section is punishable
3 pursuant to Section 273.6 of the Penal Code.

4 (k) Nothing in this section may be construed as expanding,
5 diminishing, altering, or modifying the duty, if any, of a school or
6 postsecondary educational institution to provide a safe environment
7 for students and other persons.

8 (l) The Judicial Council shall develop forms, instructions, and
9 rules for scheduling of hearings and other procedures established
10 pursuant to this section. The forms for the petition and response
11 shall be simple and concise, and their use by parties in actions
12 brought pursuant to this section shall be mandatory.

13 (m) A temporary restraining order or injunction relating to
14 harassment or domestic violence issued by a court pursuant to this
15 section shall be issued on forms adopted by the Judicial Council
16 and that have been approved by the Department of Justice pursuant
17 to subdivision (i) of Section 6380 of the Family Code. However,
18 the fact that an order issued by a court pursuant to this section
19 was not issued on forms adopted by the Judicial Council and
20 approved by the Department of Justice shall not, in and of itself,
21 make the order unenforceable.

22 (n) Information on any temporary restraining order or injunction
23 relating to harassment or domestic violence issued by a court
24 pursuant to this section shall be transmitted to the Department of
25 Justice in accordance with subdivision (b) of Section 6380 of the
26 Family Code.

27 (o) There is no filing fee for a petition that alleges that a person
28 has inflicted or threatened violence against a student of the
29 petitioner, or stalked the student, or acted or spoken in any other
30 manner that has placed the student in reasonable fear of violence,
31 and that seeks a protective or restraining order or injunction
32 restraining stalking or future violence or threats of violence, in
33 any action brought pursuant to this section. No fee shall be paid
34 for a subpoena filed in connection with a petition alleging these
35 acts. No fee shall be paid for filing a response to a petition alleging
36 these acts.

37 (p) (1) Subject to paragraph (4) of subdivision (b) of Section
38 6103.2 of the Government Code, there shall be no fee for the
39 service of process of a temporary restraining order or injunction

1 to be issued pursuant to this section if either of the following
2 conditions apply:

3 (A) The temporary restraining order or injunction issued
4 pursuant to this section is based upon stalking, as prohibited by
5 Section 646.9 of the Penal Code.

6 (B) The temporary restraining order or injunction issued
7 pursuant to this section is based upon a credible threat of violence.

8 (2) The Judicial Council shall prepare and develop application
9 forms for applicants who wish to avail themselves of the services
10 described in this subdivision.

11 SEC. 2. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.

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18 **All matter omitted in this version of the bill**
19 **appears in the bill as introduced in the**
20 **Senate, February 18, 2009 (JR11)**
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